Filed 3/11/09 In re V.S. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re V.S., a Person Coming Under the Juvenile Court Law.	B207335
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. V. S., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK71816)

APPEAL from a judgment of the Superior Court of Los Angeles County. Emily Stevens, Judge. Affirmed.

Megan T. Schirn, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Los Angeles County Department of Children and Family Services, Plaintiff and Respondent.

M. Elizabeth Handy, under appointment by the Court of Appeal, for the Minor.

V.S. (Father) and his son V.S. appeal from a jurisdictional order declaring V.S. a dependent of the juvenile court pursuant to Welfare and Institutions Code section 300, subdivisions (a) (serious physical harm) and (b) (failure to protect).[1] Father also appeals from the dispositional order requiring him to attend individual and conjoint counseling. We reject Father and V.S.'s challenges to the sufficiency of the evidence and affirm the orders.

BACKGROUND

Shortly after Ana A. (Mother) gave birth to V.S. in July 2007, she began to suffer from post-partum depression and symptoms of post-traumatic stress disorder (PTSD). In November 2007, when two different medications did not alleviate Mother's depression, her primary care physician recommended that Mother obtain a psychiatric assessment and commence group counseling at Aurora Charter Oak Hospital (Aurora Hospital). In early December, Mother obtained an assessment but did not start group counseling because she was waiting for verification that Father's health insurance would cover the treatment.

On December 18, 2007, when V.S. was five months old, Mother placed a blanket over his mouth to stop him from crying. According to Mother, she removed the blanket less than two seconds later and called Father for assistance. Father left V.S. with V.S.'s maternal aunts and took Mother to Aurora Hospital for psychiatric care. The hospital reported Mother's conduct to the Los Angeles County Department of Children and Family Services (DCFS). DCFS examined V.S., who was staying with his maternal grandparents, and noted that he appeared alert and well-groomed. Mother remained in the hospital for two weeks, and, upon her discharge, Mother and Father agreed to family

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[1] All subsequent statutory references are to the Welfare and Institutions Code. Because father and son share the same name, we will refer to defendant V.S. as Father and his son as V.S. to avoid confusion.

maintenance and preservation services for six months, which included psychiatric counseling, psychotropic medication, parenting education for Mother, and parenting education for Father. V.S. remained at home with his Father, and DCFS permitted Mother to return home sometime in late January 2008.

Throughout the month of February, representatives from Bienvenidos, the organization providing family preservation services, regularly visited the family at their home. According to its report, "[t]here were no signs of abuse or neglect at time of home visits," there was "appropriate interaction between parents and child[] during home visit," and the parents appeared "caring, attentive and [able] to provide proper supervision for [the] child." When Mother attended counseling (which consisted of four group therapy sessions and one individual session a week), V.S.'s maternal grandparents cared for him. Mother was prescribed seven different psychotropic and sleep medications.

In mid-February, Mother met with Jackeline Munoz, the social worker assigned to the case. According to Munoz, Mother revealed the following during their meeting: Mother was anxious and sleepless because she depleted one of her medications and could not afford a refill; Mother missed several therapy sessions in January because she felt ashamed about her condition; Mother had stopped taking her psychotropic medications altogether for two days. When Munoz emphasized to Father the importance of Mother's compliance with her drug regimen, Father sarcastically stated that they would forgo paying their monthly car bill to refill mother's medication. According to Mother, she never stopped taking her medication, and she missed therapy only when she was ill or could not secure childcare for V.S.

On February 28, 2008, Mother disclosed during a group therapy session that she was inflicting cuts and burns on herself in response to memories of severe physical abuse by her father. Mother's group therapist contacted DCFS and reported Mother's statement. Although Mother recanted her statement about self-mutilation on the same day, DCFS detained V.S. and placed him in foster care. Mother admitted herself into Aurora Hospital on the same day because of distress and anxiety over V.S.'s detention. Mother's psychiatrist diagnosed her with bipolar disorder and discharged her several days

later. He cautioned that her ability to care for V.S. depended on her "environment and support system at home."

When Father learned that DCFS had detained V.S., he became upset, insisted that Mother's group therapist had no right to divulge Mother's statements about self-mutilation, and maintained that Mother's treatment team was not qualified to assess her mental status. When Father was asked by DCFS whether he was aware that Mother engaged in self-mutilation, he stated that he saw "marks" on her arms but never saw her inflict wounds on herself. Upon request by DCFS, Mother signed a full release of her medical records so that the agency could assess the status of her mental health. When Father learned of this, he insisted that Mother retract the full release and limit DCFS's access to her attendance and medical compliance. According to Father, he did not trust DCFS and wanted the agency to obtain Mother's information only through her psychiatrists, who would "put everything in perspective."

DCFS subsequently filed a dependency petition under section 300, subdivisions (a) (serious harm) and (b) (failure to protect). As amended, the petition alleged that Mother physically abused V.S., Mother's mental and emotional condition placed V.S. at risk of harm and danger, and Father's failure to protect V.S. endangered V.S.'s physical and emotional health.

After a prerelease investigation by DCFS, the juvenile court released V.S. from foster care and placed V.S. at home with Father, with the conditions that Mother move out and V.S.'s maternal aunt move in to assist with his care. The juvenile court permitted Mother to have monitored visits with V.S. for two hours a day.

On April 17, 2008, at the jurisdictional and dispositional hearing, Mother and Father waived their right to testify. Mother and Father stipulated to the allegations against Mother, and the juvenile court sustained the allegations accordingly. The court also sustained the allegation against Father. The juvenile court found that Father did not fully realize the severity of Mother's post-partum depression even though it was gradual and manifested itself well before the triggering abusive event. Although the court recognized that Father was making efforts to care for V.S., the court found that Father

still required direction from DCFS regarding "what is necessary, what is safe, and what needs to be done." Thus, the court concluded: "[Father] doesn't resist trying to learn but he still doesn't know intuitively or on his own without somebody explaining it. That's why he is unable and that's why the child remains at risk."

The juvenile court declared V.S. a dependent of the court and placed V.S. at home with Father on the condition that Mother not reside with them. The court permitted DCFS to liberalize Mother's visits into unmonitored overnight visits as it saw fit. In its dispositional order, the court ordered: (a) Mother to undergo individual counseling, group counseling, conjoint counseling with Father, parenting education, and compliance with medication, and (b) Father to attend individual counseling and conjoint counseling with Mother.

Father timely appealed, challenging the jurisdictional findings against him and the dispositional order. V.S. timely appealed, challenging the jurisdictional findings against Father.[2] Mother did not file a notice of appeal.

DISCUSSION

I. Jurisdiction

Father and V.S. contend substantial evidence does not support the juvenile court's jurisdictional findings against Father pursuant to subdivision (b) of section 300.

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[2] Although V.S. explicitly limited his notice of appeal to the "jurisdictional findings in which the court sustained the Welfare and Institution's Code section 300 petition against the father," he attempts to challenge the jurisdictional findings against Mother on appeal. "'Our jurisdiction on appeal is limited in scope to the notice of appeal and the judgment or order appealed from.'" (*Soldate v. Fidelity National Financial, Inc.* (1998) 62 Cal.App.4th 1069, 1073.) Although we generally construe notices of appeal liberally, "[a]n unexpressed intention or desire to appeal from [different findings] should not be read into that notice under the guise of a liberal construction." (*Estate of Roberson* (1952) 114 Cal.App.2d 267, 270.) V.S. appealed only from the findings against Father. His attempt to challenge the findings against Mother (findings that even Mother does not challenge) is unavailing, and we therefore decline to address it.

According to Father, as V.S. had suffered no harm or neglect during the one month period when V.S. was in his custody, there was no substantial risk of future serious harm to V.S. Thus, according to Father, "the failure to protect allegation had no factual basis." Similarly, V.S. contends "there was no evidence to show Father was not fully capable of safely caring for his son, and protecting him from any possible future risk of harm as a result of Mother's condition."

Subdivision (b) of section 300 provides for jurisdiction where "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately . . . protect the child from the conduct of the custodian with whom the child has been left." "Before courts and agencies can exert jurisdiction under section 300, subdivision (b), there must be evidence indicating that the child is exposed to a substantial risk of serious physical harm or illness." (*In re Rocco M*. (1991) 1 Cal.App.4th 814, 823, italics omitted.) "The basic question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm." (*In re Nicholas B*. (2001) 88 Cal.App.4th 1126, 1134.)

We review the juvenile court's jurisdictional findings under the substantial evidence test, drawing all reasonable inferences to support the findings and recognizing that issues of credibility are matters for the juvenile court. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881.) As the appellants, Father and V.S. have the burden of proving the evidence was insufficient to sustain the juvenile court's findings. (*In re Geoffrey G*. (1979) 98 Cal.App.3d 412, 420.)

Viewed in the light most favorable to the judgment (*In re Terry D*. (1978) 83 Cal.App.3d 890, 899), the record supports the juvenile court's jurisdictional findings under section 300, subdivision (b). The court had before it the jurisdiction and disposition report, which referred to the detention hearing report, and the court indicated it had read the combined hearing report and its addenda. Evidence in those reports indicated that Father failed to appreciate the severity of Mother's mental condition and that V.S. was at a substantial risk of suffering physical harm.

Before Mother placed a blanket over V.S.'s mouth, Father was aware that she was suffering from post-partum depression and PTSD and that two different medications had failed to alleviate her condition. Yet, when Mother's physician recommended counseling, Father took no steps to get Mother counseling or to remove V.S. from her care until she obtained such counseling. Father explained that he was waiting for an authorization from his health insurer to get Mother counseling. This explanation, however, does not explain why Father did not ask V.S.'s maternal aunts, who were readily available when the abuse occurred, to care for V.S. while he awaited such authorization.

Father contends a statement by the juvenile court during the jurisdictional hearing—i.e., that Father's behavior was "totally appropriate"—contradicts the court's finding that V.S. faced a substantial risk of future harm. A review of the hearing transcript, however, reveals no such contradiction. The juvenile court characterized Father's recognition that Mother should not be ashamed of her mental illness as "totally appropriate." The court did not, as Father suggests, state that Father's conduct vis-à-vis V.S. was totally appropriate, and it certainly did not state that V.S. was safe in Father's care without formal court intervention.

Relying in part on cases such as *In re David M.* (2005) 134 Cal.App.4th 822 (*David M.*), Father and V.S. argue that the record contains no evidence of a substantial risk of harm to V.S. We disagree. Unlike *David M.*, *supra*, at pages 825 and 831-832, which involved a diagnosis of mental illness four years before proceedings began and drug use three years previously, here the juvenile court had before it a pattern of recent conduct by Father that failed to recognize the severity of Mother's mental condition and the danger that condition posed to V.S. Whether Father's conduct was based on an ignorance of Mother's condition or an unwillingness to support her treatment plan, substantial evidence supports the trial court's exercise of jurisdiction in this case.

II. Disposition

Counseling: Father contends the juvenile court abused its discretion by requiring him to attend individual and conjoint counseling.

Once the juvenile court assumes jurisdiction over a child, section 362, subdivision (a) states broadly that the court "may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child . . . ." In general, "'[t]he juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion.'" (*In re Neil D.* (2007) 155 Cal.App.4th 219, 225.) The court's order "'will not be reversed absent a clear abuse of discretion.'" (*Ibid*.)

Mother's mental condition of depression, bipolar disorder, and self-mutilation tendencies was undoubtedly complicated, and the court found that Father could not provide V.S. with a safe home environment without "assistance, direction, training, [and] understanding" of Mother's condition. The court pointed out that it took "a life-threatening event" for Father to reach out for help and found that Father needed assistance in recognizing and understanding the severity of Mother's illness. In light of these findings, which we have explained are supported by substantial evidence, the trial court did not abuse its discretion in ordering Father to undergo individual and conjoint counseling.

Informal services: Section 360, subdivision (b) provides: "If the court finds that the child is a person described by Section 300, it may, without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the child and the child's parent or guardian under the supervision of the social worker for a time period consistent with Section 301." Section 301 permits the social agency, with the consent of the parents, to provide voluntary family maintenance services in lieu of filing a dependency petition.

V.S. contends that, in the circumstances presented in this case, it was an abuse of discretion for the juvenile court not to order informal supervision pursuant to section 360, subdivision (b). V.S. has forfeited this issue by failing to request informal supervision

under section 360, subdivision (b), in the juvenile court. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) Instead, V.S. asked the juvenile court to dismiss the allegation against Father and offered no fallback position. V.S. cannot now complain the juvenile court failed to do something he did not request. (*In re Cheryl E*. (1984) 161 Cal.App.3d 587, 603.)

In any event, section 360, subdivision (b), merely permits a juvenile court to order informal supervision. Given evidence that Father had not complied with family preservation services already in place, the juvenile court committed no abuse of discretion in declaring V.S. a dependent of the court, rather than ordering informal services under section 360, subdivision (b).

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

BAUER, J.*

We concur:

MALLANO, P. J.

ROTHSCHILD, J.

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* Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article, section 6 of the California Constitution.